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Nos. 83-1321, 83-1432, 83-1433, 83-1442, 83-1443, 83-1618

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Petitioners,

v.

TENNECO OIL COMPANY, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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APPENDIX TO THE SUPPLEMENTAL MEMORANDUM OF RESPONDENTS TENNECO OIL COMPANY AND CONOCO INC.

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APPENDIX

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

EL PASO NATURAL GAS COMPANY	Docket No. CP74-314
SUN EXPLORATION AND PRODUCTION COMPANY, *et al.*	Docket No. CI77-526
EL PASO NATURAL GAS COMPANY	Docket No. CI83-356
TENNECO OIL COMPANY	Docket No. CI84-49
CONOCO INC.	Docket No. CI84-50

OFFER OF SETTLEMENT AND JOINT REQUEST FOR APPROVAL OF STIPULATION OF SETTLEMENT AND AGREEMENT

El Paso Natural Gas Company ("El Paso"), Tenneco Oil Company ("Tenneco Oil") and Conoco Inc. ("Conoco"), pursuant to Rule 602 of the Rules of Practice and Procedure (18 C.F.R. § 385.602) of the Federal Energy Regulatory Commission,[1] hereby jointly submit this Offer of Settlement in the above-captioned proceedings. Each respectfully requests that the Commission promptly approve the attached "Stipulation of Settlement and Agreement" ("Settlement"), together with all related Operative Agreements, as a full, fair, final and reasonable resolution of such proceedings as they affect El Paso, Tenneco Oil and Conoco, and issue all approvals and authorizations necessary for effectuation of this settlement.[2]

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[1] The Federal Energy Regulatory Commission, and its statutory predecessor, the Federal Power Commission, are collectively referred to herein as the "Commission."

[2] The Explanatory Statement requested by Rule 602 is incorporated in this Offer of Settlement. A form of Commission order approving the settlement is attached as Appendix A hereto.

INTRODUCTION

This joint Offer of Settlement will resolve all outstanding issues related to those gas lease sale agreements ("GLA's") between El Paso, Tenneco Oil and Conoco, hereinafter referred to as GLA's 47, 52, 60 and 78.

Although relating to only four of eighteen GLA's at issue in Docket No. CP74-314, *et al.*, production attributable to these four GLA's constitutes approximately 70 percent of total production on all GLA's and approximately 15 percent of El Paso's total gas supply from the San Juan Basin. Thus, settlement by these parties will resolve as to the great majority of the gas involved in Docket Nos. CP74-314, *et al.* and CI83-356 and as to Docket Nos. CI84-49 and CI84-51 in their entirety, all issues as between El Paso, Tenneco Oil and Conoco raised in highly complex litigation which has already consumed eleven years without resolution, and will secure for El Paso and its customers the benefits described herein.

Because this Settlement will resolve the overwhelming majority of the litigation in the above dockets, Applicants request its expeditious consideration and approval.

The nature of the settlement and the reasons why it should be promptly approved are described below:

I.

BACKGROUND

The subject of the controversy between El Paso and Tenneco Oil and Conoco, and the subject of the Offer of Settlement herein, are the GLA's entered into between El Paso and predecessors-in-interest of Tenneco Oil and Conoco in the early 1950's. The GLA's conveyed to El Paso the working interests held by the predecessors of Tenneco Oil and Conoco in oil and gas leases in the San Juan Basin area of New Mexico. GLA-47, the first of the GLA's involved in this proceeding, and the largest, was signed on January 18, 1952 and covered 102,400 acres.

GLA-52, signed on April 19, 1952, covered 29,600 acres. GLA-60 was signed on September 26, 1952 and covered 3,500 acres. GLA-78, signed on July 8, 1953, covered 10,500 acres. The four GLA's in which Tenneco Oil and Conoco presently have an interest are among a series of GLA's entered into between El Paso and various lease owners in the San Juan Basin in the 1950's.

The GLA's reserved to the predecessors-in-interest of Tenneco Oil and Conoco an overriding royalty on gas calculated in a number of cents per Mcf, which amount escalated over time pursuant to a schedule in each GLA. The GLA's provided for redetermination of the overriding royalty through negotiation or arbitration at specified intervals. The GLA's stated that if the overriding royalty was to be redetermined by a board of arbitration, the arbitrators were to base their decision on the then current field prices of then newly negotiated contracts for gas purchased by El Paso. The GLA's also reserved to the predecessors-in-interest of Tenneco Oil and Conoco an overriding royalty of one-third of the net liquids extracted from the gas stream, to be taken in value or in kind.

Tenneco Oil and Conoco succeeded to their interests in GLA's 47, 52, 60 and 78 in 1964 as a result of their acquisition of certain of the assets of the Delhi-Taylor Oil Corporation ("Delhi-Taylor"), which had succeeded to the rights under these GLA's. At the present time, Tenneco Oil and Conoco share an equal and undivided interest in each of the GLA's.[3]

In 1973, negotiations between Sun Oil Company ("Sun") and El Paso failed to achieve redetermination of the overriding royalty on gas under GLA-61, one of

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[3] In 1964 Tenneco Oil and Conoco also succeeded to the interests of Delhi-Taylor in other properties in the San Juan Basin and elsewhere. Included among the interests to which they succeeded are gas sales contracts entered into between Delhi-Taylor (and others) and El Paso in the San Juan Basin.

the GLA's that is similar to GLA's 47, 52, 60 and 78 and involved in the above-referenced proceedings, but not a subject of this Settlement. Sun sought arbitration of the amount of the overriding royalty in accordance with the terms of GLA-61, and a board of arbitration awarded Sun an increase in its overriding royalty from 10 cents per Mcf to 40 cents per Mcf on July 31, 1973. Demands for similar increases in overriding royalties thereafter were made by Tenneco Oil and Conoco and other overriding royalty owners pursuant to the arbitration clauses and favored nations clauses in their GLA's.

In response to these demands, El Paso initiated suit in the United States District Court for the District of Columbia on September 14, 1973, seeking: 1) an injunction against enforcement of the Sun arbitration award; 2) an injunction against further arbitrations; 3) to avoid claims under favored nations clauses in the GLA's; and 4) declaratory judgment that the GLA transactions were price regulated sales of natural gas within the meaning of Section 1(b) of the Natural Gas Act.[4] The United States District Court for the District of Columbia consolidated the individual cases and transferred them to the Western District of Texas.

On June 3, 1974, El Paso filed a complaint with the Commission in Docket No. CP74-314, one of the Dockets herein, requesting the Commission to determine that the GLA's were jurisdictional sales of gas under the Natural Gas Act. El Paso requested that the Commission seek a reference from the District Court on the issue of jurisdiction. El Paso at the same time moved the District Court to refer the case to the Commission. Neither motion was granted.

In 1974, El Paso sought Commission approval to include in its rates its potential increased overriding roy-

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[4] 15 U.S.C. § 717(b).

alty liability under the GLA's resulting from arbitration awards or other price redeterminations. On July 15, 1974, the Commission issued an order denying El Paso rate coverage for increased overriding royalties where the liability to pay was unclear, the amount to be paid was "very uncertain," and El Paso had not yet made such increased payments.[5]

Thereafter, El Paso and Tenneco Oil and Conoco, and El Paso and the other GLA owners, signed a series of Settlement Agreements, effective October 29, 1974, by which, among other things, the level of the overriding royalty on gas under the GLA's was established for the period from June 1, 1974 forward.[6] The 1974 Settlement Agreements provided for redetermination of the overriding royalty amount on June 1 of each subsequent year according to a formula set out in the Agreements.

After the execution of the 1974 Settlement Agreements, El Paso renewed its request to the Commission to be allowed to recover the overriding royalty amounts which were then paid under the 1974 Settlement Agreements.[7] On February 16, 1977, the Commission issued an order approving a settlement of several El Paso rate cases, and permitting El Paso to recover the overriding royalties paid under the 1974 Settlement. The Commission found that El Paso acted prudently both in entering into the original GLA's in the 1950's and in entering into the Settlement Agreements with Tenneco Oil and Conoco and the other GLA owners in 1974,[8] in light of El Paso's

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[5] El Paso Natural Gas Co., 52 F.P.C. 101, 103 (1974).

[6] The settlement rate agreed upon was the highest rate of general applicability prescribed or permitted by the Commission, less seven cents.

[7] *See* El Paso Natural Gas Co., Docket Nos. RP72-150, *et al.*

[8] *Id.* at 998-99. Specifically with respect to the 1974 Settlement Agreements the Commission stated: "We have determined the settlement rates to be prudent in light of the circumstances." *Id.* at 1001.

reservations in the 1974 Settlement Agreements of the right to actively pursue the pending litigation, and El Paso's agreement to flow through all refunds ultimately obtained in such litigation.[9] The Commission concluded, "the net impact of El Paso's settlement appears to be the most favorable alternative for El Paso and its customers." [10]

The jurisdiction issue was tried before the United States District Court for the Western District of Texas. In 1977, the court held that the GLA transactions are not sales of gas subject to the Natural Gas Act and dismissed the case for lack of subject matter jurisdiction.[11]

After the issuance of the District Court decision, the Commission on June 3, 1977 instituted a show-cause proceeding in Docket Nos. CP74-314, CP76-327 and CI77-526 on the issues of: 1) Natural Gas Act jurisdiction over the GLA's; and 2) the actions that should be taken by the Commission in the event jurisdiction were found to exist.[12]

The show-cause proceeding instituted by the Commission included as parties El Paso and the GLA owners, including Tenneco Oil and Conoco, and Northwest Pipeline Corporation ("Northwest") and the owners of overriding royalties under "Pacific" lease agreements ("PLA's") entered into in the 1950's with Pacific Northwest Pipeline Company, the predecessor of Northwest. The PLA's were similar in many respects to the GLA's entered into by El Paso. Northwest had intervened in the District Court litigation with respect to one PLA,

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[9] El Paso Natural Gas Co., 57 F.P.C. 989 (1977).

[10] *Id.* at 1000.

[11] El Paso Natural Gas Co. v. Sun Oil Co., 426 F. Supp. 963 (W.D. Tex. 1977).

[12] El Paso Natural Gas Co., 58 F.P.C. 2181 (1977).

PLA-13. Northwest had been granted intervention in the Commission proceeding in 1976.[13]

In an order issued on September 25, 1980,[14] the Commission affirmed an Administrative Law Judge decision in the show-cause proceeding in which the GLA's and PLA's were determined to constitute jurisdictional sales of gas.[15] In its order, the Commission called for further proceedings before a Presiding Administrative Law Judge to determine:

> (1) whether and if so to what extent were the payment made by El Paso, Northwest and PNW to the overriding royalty owners excessive and therefore unlawful, (2) what if any amount should be required to be refunded by the royalty owners to El Paso and Northwest and flowed through by them to their jurisdictional customers, and (3) what level of royalties should be approved for the future.[16]

Petitions for review of the Commission decision on jurisdiction were consolidated with the appeal by El Paso from the District Court judgment before the United States Court of Appeals for the Fifth Circuit. At the same time, "remedy" proceedings commenced herein before the Presiding Administrative Law Judge. Prepared direct testimony and proposed exhibits were filed by El

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[13] El Paso Natural Gas Co., 55 F.P.C. 1677 (1976). Tenneco Oil and Conoco and others filed petitions for review of the Commission order instituting the show-cause proceeding. These petitions were consolidated with the appeal from the District Court decision filed by El Paso in the United States Court of Appeals for the Fifth Circuit. The Court of Appeals deferred decision on the issue of Natural Gas Act jurisdiction until the Commission issued an order in Docket No. CP74-314, *et al.* Tenneco Oil Co. v. FERC, 580 F.2d 722 (5th Cir. 1978).

[14] El Paso Natural Gas Co., 12 F.E.R.C. ¶ 61,296 (1980).

[15] El Paso Natural Gas Co., 6 F.E.R.C. ¶ 63,037 (1979).

[16] 12 F.E.R.C. at 61,685.

Paso, Northwest, and the GLA owners. A hearing on the remedy phase was scheduled to begin on September 12, 1983.

On July 5, 1983, the Court of Appeals reversed the Commission order and affirmed the judgment of the District Court, holding that the GLA's and PLA's do not constitute jurisdictional sales of gas under the Natural Gas Act.[17] The Fifth Circuit denied petitions for rehearing and suggestions for rehearing *en banc* by an unpublished order dated December 2, 1983. Petitions for a writ of certiorari have been filed in the United States Supreme Court by several parties to the proceedings.[18] No action yet has been taken by the Supreme Court on these petitions.

Following the Fifth Circuit's holding of nonjurisdiction in *Sun Oil* and the decision of the Supreme Court of the United States one week earlier that pipeline produced gas is subject to "first sale" treatment under the Natural Gas Policy Act,[19] *Public Service Commission v. Mid-Louisiana Gas Co.*,[20] El Paso on August 1, 1983, served notice on the GLA interest owners that it was reassign-

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[17] El Paso Natural Gas Co. v. Sun Oil Co., 708 F.2d 1011 (Former 5th Cir. 1983). As a consequence of the Fifth Circuit decision the Presiding Administrative Law Judge suspended the remedy proceedings in these Dockets.

[18] Petitions have been filed in the following cases: California, *et al.* v. Tenneco Oil Co., *et al.*, No. 83-1321; Public Utility Commissioner of Oregon, *et al.* v. Phillips Petroleum Co., *et al.*, No. 83-1432; Northwest Pipeline Corp., *et al.* v. Phillips Petroleum Co., *et al.*, No. 83-1433; El Paso Natural Gas Co. v. Tenneco Oil Co., *et al.*, 83-1442; Pacific Gas and Electric Co., *et al.* v. Tenneco Oil Co., *et al.*, No. 83-1443; FERC v. Tenneco Oil Co., *et al.*, No. 83-1618.

[19] 15 U.S.C. § 3301, *et seq.* [hereinafter cited as the "NGPA"].

[20] —— U.S. ——, 103 S. Ct. 3024 (1983) [hereinafter cited as "*Mid-La*"].

ing to them unilaterally, effective October 1, 1983, all leasehold and other interests conveyed under the GLA's.[21]

Also on August 1, 1983, El Paso instituted suit in a state district court in Harris County, Texas in which Tenneco Oil and Conoco, among other GLA owners, were named as defendants.[22] In its petition El Paso sought a declaratory judgment under the Texas Declaratory Judgments Act[23] that certain specified provisions in the GLA's entitled El Paso to reassign to Tenneco Oil and Conoco and the other GLA owners the rights El Paso held under the GLA's. Tenneco Oil and Conoco and the other GLA owners thereafter filed answers denying El Paso's claims and asserting counterclaims against El Paso.

Concurrent with the filing of its petition in Texas state court, El Paso filed a petition with the Commission in Docket No. CI83-356 in which it noted its tendered reassignment of its lease rights under the GLA's and requested the Commission to order Tenneco Oil and Conoco and the other GLA owners to apply for and obtain certificates under Section 7(c) of the Natural Gas Act for sales of gas from the GLA acreage to El Paso.[24] Tenneco

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[21] Such reassignments were based upon provisions in the GLA's that El Paso asserted permitted it to reassign any well the operation of which had become unprofitable and, in the case of certain leases, provisions in the GLA's which El Paso asserted provided for a conversion from a royalty to a working interest upon the occurrence of a specified event. Because five of the GLA's—GLA's 153, 348, 349, 350 and 351—were not subject to such asserted rights of reassignment, El Paso's tender of reassignment as to those GLA's was subject to acceptance by the GLA owners.

[22] El Paso Natural Gas Co. v. Tenneco Oil Co., *et al.*, No. 83-50539 (11th Judicial District, Harris County, Texas).

[23] Tex. Rev. Civ. Stat. Ann. art. 2524-1 (Vernon 1965 and Vernon Supp. 1982).

[24] El Paso Natural Gas Co., FERC Docket No. CI83-356, "Petition of El Paso Natural Gas Company for Issuance of Commission

Oil and Conoco and other GLA owners filed petitions for leave to intervene in Docket No. CI83-356 and protests and objections to El Paso's petition.[25]

Solely as a protective matter, in order to protect their rights in the event the Commission initiated action in conjunction with El Paso's petition in Docket No. CI83-356, Tenneco Oil and Conoco each filed conditional applications for certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act covering sales of gas from the GLA properties to El Paso. These applications for conditional certificates were filed on November 2 and 3, 1983 in Docket Nos. CI84-49 and CI84-51.[26] El Paso filed motions to intervene in both of these Dockets on December 7, 1983.[27] To date, no action has been taken by the Commission either on El Paso's petition in Docket No. CI83-356[28] or on Tenneco Oil and

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Order" (filed August 1, 1983). In its petition El Paso asserted that it was not required to obtain abandonment approval under Section 7(b) of the Natural Gas Act for the transfer of production properties and facilities subject to Commission jurisdiction. El Paso claimed that the transfer merely shifted the service obligation as to dedicated gas to Tenneco Oil and Conoco and the other GLA owners. El Paso Petition at 10-11.

[25] *See* El Paso Natural Gas Co., Docket No. CI83-356, "Petition for Leave to Intervene and Protest of Undersigned Companies and Persons" (filed August 26, 1983).

[26] Tenneco Oil Co., Docket No. CI84-49, "Application of Tenneco Oil Company for Conditional Certificate of Public Convenience and Necessity" (filed November 2, 1983); Conoco Inc., Docket No. CI84-51, "Application of Conoco Inc. for Conditional Certificate of Public Convenience and Necessity" (filed November 3, 1983).

[27] Tenneco Oil Company, Docket No. CI84-49, "Motion To Intervene of El Paso Natural Gas Company" (filed December 7, 1983); Conoco Inc., Docket No. CI84-51, "Motion To Intervene of El Paso Natural Gas Company" (filed December 7, 1983).

[28] In an order accepting for filing and suspending El Paso's proposed tariff sheets in the purchased gas cost adjustment case filed by El Paso on August 31, 1983 in Docket No. TA84-1-33, the Com-

Conoco's applications in Docket Nos. CI84-49 and CI84-51.

Because of the decision of the United States Supreme Court in *Mid-La*, and as provided in the terms of the rate settlement entered into between El Paso and its customers that was approved by the Commission on May 31, 1983,[29] El Paso, on August 31, 1983, effected its implementation of *Mid-La*, *inter alia*, as to its purchased gas costs for company owned production from the GLA acreage. The Commission accepted El Paso's PGA for filing in an order dated September 30, 1983.[30]

On February 27, 1984, after a trial on the merits of El Paso's claims in Texas state court, the trial judge entered a judgment by which the relief sought by El Paso was denied. El Paso was ordered to file a notice of rescission of its attempted reassignments and was ordered to continue to perform its duties as the working interest owner under the GLA's.[31] El Paso has preserved its statutory rights with respect to an appeal.

Since the issuance of the decision in the Fifth Circuit, some of the parties to the above-referenced proceedings before the Commission have entered into settlement agreements resolving some or all of the issues involved. Specifically, a Commission order approving a Settlement Agreement between Northwest and Phillips Petroleum Company was issued on November 23, 1983.[32] In addi-

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mission ordered that acceptance of El Paso's filing was conditioned upon "the outcome of proceedings in Docket No. CI83-356 relating to GLA production." El Paso Natural Gas Co., 24 F.E.R.C. ¶ 61,390 at 61,827 (1983).

[29] El Paso Natural Gas Co., 23 F.E.R.C. ¶ 61,365 (1983).

[30] El Paso Natural Gas Co., 24 F.E.R.C. ¶ 61,390 (1983).

[31] El Paso Natural Gas Co. v. Tenneco Oil Co., No. 83-50539, Judgement entered Feb. 29, 1984 (Dist. Ct. Harris County, Texas).

[32] 25 F.E.R.C. ¶ 61,292 (1983).

tion, Northwest and Getty Oil Company filed an Offer of Settlement with the Commission on January 31, 1984. The Presiding Administrative Law Judge certified the uncontested Offer of Settlement to the Commission on February 24, 1984.[33]

Finally, El Paso and Union Oil Company of California ("Union") entered into a settlement agreement with respect to the litigation in the State District Court in Harris County, Texas by which Union accepted El Paso's tendered reassignment of the lease rights and acreage under GLA-76, GLA-348 and GLA-349. The gas sales contract between Union and El Paso, dated October 1, 1983, is the subject of a Section 7(c) certificate application in Docket No. CI84-141.[34]

II.

SUMMARY OF THE PROPOSED SETTLEMENT

A. *The Stipulation of Settlement and Agreement*

The Settlement and the Operative Agreements resolve for all purposes all issues in these dockets as to El Paso, Tenneco Oil and Conoco by "conventionalizing" the production of natural gas from the four GLA's subject to the Settlement into sales of gas in interstate commerce for resale.

Under the terms of the Settlement, El Paso will reassign to Tenneco Oil and Conoco the interests in properties conveyed by Tenneco Oil and Conoco's predecessors-in-interest under GLA's 47, 52, 60 and 78 as of the Effective Date of the Agreement as defined in the Settlement. Under Article V of the Settlement, the Effective Date is that date on which all orders necessary to implement the

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[33] 26 F.E.R.C. ¶ 63,080 (1984).

[34] *See* Union Oil Co. of California, Docket No. CI84-141, Notice of Application for Certificate of Public Convenience and Necessity" (issued December 22, 1983).

Settlement become final, no longer subject to judicial review, and are accepted by each Applicant. Tenneco Oil and Conoco also have an option to accept the lease reassignments prior to such approvals. However, exercise of the option does not obviate the need for all Commission approvals sought herein.

B. *The Tenneco Oil and Conoco Purchase Agreements and Amendments to Gas Sales Agreements*

Upon the Effective Date, Tenneco and Conoco will commence "first sales" of natural gas in interstate commerce to El Paso in accordance with the terms and provisions of the Tenneco Oil Gas Purchase Agreement (Exhibit D) and the Conoco Gas Purchase Agreement (Exhibit E). Thereby, litigation which has been pending before this Commission and various courts over the last eleven years as to whether the overriding royalties attributable to these leases are jurisdictional sales of gas will be concluded. Pursuant to this Settlement, Tenneco Oil and Conoco will become first sellers clearly subject to the Commission's pricing jurisdiction. Approval of the Settlement will lift the burdens imposed by the overriding royalties, and two producers who have incentive to develop gas reserves in the Basin will take over the operation of the properties.

Under the Settlement, Tenneco Oil and Conoco will surrender their right to an overriding royalty of $3.74 per Mcf, which is scheduled to escalate to approximately $4.00 per Mcf as of June 1, 1984, and instead will be governed by the applicable maximum lawful prices. The parties have contracted for a base price of $2.00 per MMBtu, escalated with inflation, for a period through June 30, 1986, for gas not otherwise qualifying for a higher maximum lawful price, and thereafter a base price equal to the maximum lawful price established pursuant to Section 106(a) of the NGPA.

The $2.00 base price is a compromise of a dispute as to the appropriate price to be applied to such gas. Virtually all of that gas is currently priced at a replacement/rollover rate by El Paso in its implementation of *Mid-La* pricing. However, as of November 8, 1978, the relevant determination date for independent producer pricing under the NGPA, the GLA gas here involved was being priced by El Paso as pipeline production under the Natural Gas Act, and Commission orders approving such inclusion were in effect. Thus, there are bases for contending that higher rates, including the Section 109 rate, and even higher rates, could apply.

It is not necessary for the Commission to address and decide the legal questions posed on the pricing issues. Rather, Applicants submit that the pendency of these issues argue in favor of the compromise on the matter reached by the parties. The $2.00 base price is less than the Section 109 maximum lawful price, and it reduces as of July 1, 1986 to the rollover price. Even with this approach, San Juan Basin gas remains the lowest cost source of gas on the El Paso system.

At the same time, and in connection with the compromise on the base price, El Paso negotiated for and has received market-out rights exercisable in its sole discretion. Presently, El Paso has no judicially recognized contractual right to reduce the level of the much higher overriding royalties currently payable. Further, El Paso has not been successful thus far in its undertaking unilaterally to reassign the GLA properties as a means of lifting the overriding royalty burden, a fact reaffirmed as recently as February 29, 1984 by the Texas State District Court. Market-out provisions are thus critical to El Paso in providing a dependable mechanism to assure that it will be able to adjust pricing of the GLA gas to reflect market conditions as they change from time to time. Approval of the Settlement achieves this result.

The Gas Purchase Agreements contain provisions whereby El Paso will take or pay for 60 percent of the daily stabilized producing capacity of each well for the first two years of the two agreements. Thereafter, El Paso will take 75 percent of gas well deliverability under the Tenneco Oil contract and 85 percent of gas well deliverability under the Conoco contract.[35]

Article III of the Tenneco Oil Gas Purchase Agreement and Article IV of the Conoco Gas Purchase Agreement reserve to Tenneco Oil and Conoco the right to process all gas subject to those agreements. After all regulatory approvals have been obtained, Tenneco Oil and Conoco have the right to construct at their sole cost and expense a new, efficient liquids processing plant using modern technology (referred to herein as the New Blanco Plant). Until the construction of the New Blanco Plant, Tenneco Oil and Conoco will have the right to use El Paso's processing facilities located in the San Juan Basin, (commonly referred to as the San Juan, Chaco and Blanco Plants or the El Paso Complex), in accordance with the provisions of the El Paso Complex Gas Processing Agreement (Exhibits M and N). Once the New Blanco Plant is built, Tenneco Oil and Conoco will process all gas sold to El Paso under the Agreements in that Plant.

Pursuant to Article IV of the Tenneco Oil Gas Purchase Agreement and Article III of the Conoco Gas Purchase Agreement, Tenneco Oil and Conoco each have reserved the right to withhold from sale to El Paso up to 25 percent of their respective pro-rata share of proved

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[35] Because of the way in which the take-or pay is structured in the Conoco contract, the 85 percent take-or-pay currently translates into an effective rate of 74.4 percent. Further, because of the exclusion of certain higher cost gas from the calculation in effecting such reduction, the overall effect is to reduce the economic consequences of the take-or-pay. El Paso's take-or-pay obligation under both contracts is subject to further reduction under circumstances specified therein.

recoverable gas reserves not subject to the requirements of Section 7(b) of the Natural Gas Act; and El Paso has released and waived any rights thereto granted by Section 315(b) of the NGPA if the reserved gas is sold to an affiliate. In addition, Tenneco and Conoco each have reserved the right to terminate their respective Gas Purchase Agreements with respect to any gas as to which El Paso has exercised its contract right to "market out" by lowering the "first sales" price to that determined by El Paso to be the value of the gas to El Paso and which is not subject to the abandonment requirements of Section 7(b) of the Natural Gas Act.

The gas subject to the reservation and release is limited to gas not subject to the requirements of Section 7(b) of the Natural Gas Act. Tenneco Oil and Conoco do not have any reservation or market-out release claims as to the older, lower cost gas, thereby preserving the benefit of this lower cost gas for El Paso's customers.

At the same time, however, Tenneco Oil and Conoco have the right to commit their currently undedicated acreage in the San Juan Basin under these Agreements. Thereby, El Paso has gained a preferential contracting position as to future development on any of Tenneco Oil and Conoco's undrilled acreage in the Basin.

El Paso and Conoco and El Paso and Tenneco Oil have amended those existing gas purchase contracts referenced in Appendix A of the Tenneco Amendment of Gas Purchase Contracts (Exhibit D-1) and Exhibit A of the Conoco Amendment of Gas Purchase Contracts (Exhibit E-1) to provide Tenneco Oil and Conoco the right to process all gas sold under such gas sales contracts on the same terms and conditions as provided for in the Gas Purchase Agreements, the El Paso Complex Processing Agreement and the Gas Plant Straddle and Processing Agreement.

C. *Gas Gathering and Transportation Agreements*

Pursuant to the Gas Gathering and Transportation Agreements (Exhibits F-1, F-2, G-1, G-2, H and I), El Paso will gather and transport, on behalf of Tenneco Oil and Conoco, that gas reserved by Tenneco and Conoco and that gas subject to release from the provisions of each Gas Purchase Agreement by virtue of El Paso's exercise of its "market out" right. El Paso's obligation to gather and transport such gas on behalf of Tenneco Oil and Conoco is on a best efforts basis, subject to capacity being available in El Paso's gathering and transportation facilities.

The charges for transportation (gathering) by El Paso shall be those rates in effect and reflected from time to time as the "Production Area Charges—Field Gathering" set forth in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 or any superseding tariff. The rates to be charged by El Paso for all forward haul transportation for the account of Tenneco and Conoco shall be those reflected from time to time as the "Mainline Transmission Charges" set forth in El Paso's FERC Gas Tariff, Third Revised Volume No. 2, or any superseding tariff. The back haul transportation rates to be charged by El Paso shall be equal to one-half of the forward haul transportation rates, as reflected in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 or any superseding tariff.

D. *El Paso Complex Gas Processing Agreement*

The El Paso Complex Gas Processing Agreement provides that El Paso will process for Tenneco Oil and Conoco all gas produced in the San Juan Basin and sold by Tenneco Oil and Conoco to El Paso, including under both the Tenneco Oil and Conoco Gas Purchase Agreements, as well as any other gas sales contract entered into between the parties on or after the Effective Date of the Settlement. The Complex Gas Processing Agreement provides

that for the first five years of such agreement, El Paso will deliver to Tenneco Oil and Conoco at the tailgate of its Complex processing facilities, 77 percent of the liquefiables recovered from processing. For a period of five years thereafter, El Paso will deliver to Tenneco Oil and Conoco not less than 72 percent of the liquefiables recovered in processing. Provision is made for redetermination each five (5) years.

E. *Lease, Plant Siting Agreement and Gas Plant Straddle and Processing Agreement*

Pursuant to the terms of the Plant Siting Agreement between El Paso, Tenneco Oil and Conoco (Exhibit K), El Paso has leased to Tenneco Oil and Conoco approximately 30 acres of land located in the vicinity of El Paso's existing Blanco processing plant and agreed to assist and cooperate with Tenneco Oil and Conoco in their construction and operation of the New Blanco Plant which will have a design throughput capacity of 500 MMcf per day. Tenneco Oil and Conoco's right to construct and operate the New Blanco Plant is expressly conditioned upon receipt and acceptance of all regulatory approvals necessary for such construction and operation, including but not limited to all authorizations by this Commission.

Pursuant to the terms of the Gas Plant Straddle and Processing Agreement (Exhibit L), Tenneco Oil and Conoco will each commit its gas for processing in the Plant. El Paso will, for a period of twenty years, deliver to the New Blanco Plant all volumes of Tenneco Oil and Conoco gas which they have committed to El Paso under the Tenneco Oil and Conoco Gas Purchase Agreements, the Amendments to Gas Purchase Agreements and from other San Juan Basin producers whose gas is being processed in the Plant, and will supply a volume of El Paso's gas equal to the difference of those volumes of

gas processed by Tenneco Oil and Conoco for their own account and the account of others and the operational capacity of the plant. El Paso's obligations are subject to the market demand situation on its system.

In consideration for the processing of El Paso gas at the New Blanco Plant, Tenneco Oil and Conoco will receive a processing fee equal to 39 percent of the recovered liquefiable hydrocarbons. In the event Tenneco Oil and Conoco process for others at a lower processing fee, El Paso has the right to the lower processing fee.

The Straddle and Processing Agreement requires El Paso to construct and operate those tap and appurtenant facilities necessary for the delivery of gas to and acceptance of gas from the New Blanco Plant, and to make such modifications as are required for it to meet its obligations under the terms of that Agreement. It further provides that Tenneco Oil and Conoco will install and operate secondary inlet compression of at least 10,000 horsepower. Tenneco Oil and Conoco may request El Paso to shut down or idle existing compressors at the Blanco site in connection with the operation of the New Blanco Plant, but Tenneco and Conoco will replace all additional amounts of compression or horsepower which it requests El Paso to shut down or idle, subject to the 10,000 horsepower floor.

F. *Transportation and Fractionation*

El Paso will provide Tenneco Oil and Conoco with transportation and fractionation services in connection with the plant products extracted in the processing of gas in the San Juan Basin. Fractionation will be provided at a rate of 4 cents per gallon, subject to escalations for increases in costs. In the event Tenneco Oil

and Conoco build liquid transportation facilities, they will provide El Paso *pro rata* access to the facilities.

G. *Refunds*

Pursuant to Article VI of the Settlement, Tenneco Oil and Conoco each shall refund to El Paso, within 30 days of issuance of final and nonappealable orders approving this Offer of Settlement, a sum of $25,000,000, for a total of $50,000,000, in settlement of all past, present and future claims arising out of or in any way related to these docketed proceedings. These refunds are to be flowed through by El Paso to its customers under the terms of prior rate settlements. The refunds are payable without regard to whether or not the Supreme Court denies certiorari.

H. *Termination*

The Settlement may be terminated at the earlier of any of the following dates: (a) by either side if final Commission approval in a form satisfactory to such party has not issued within 15 months after the date of execution, (b) by Tenneco Oil and Conoco if such final approval has not issued within 180 days following denial of certiorari in the litigation now pending before the Supreme Court, and (c) by El Paso, if such final approval has not issued within 30 days following the final reversal of the decision in *Sun Oil, supra.* In addition, if the orders are unacceptable, any of the parties have the right to terminate the Settlement Agreement.

Because the right to terminate arises in the event that the approvals are no longer subject to judicial review, expeditious consideration by this Commission is necessary to assure that approvals become final before the termination rights arise.

III.

APPROVAL OF THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. *Future Purchases on Reasonable Terms.*

Under the GLA's, El Paso is presently required to pay an amount of overriding royalty—$3.74 per Mcf—greatly exceeding the revenues it receives upon sale of the GLA production pursuant to its implementation of the Supreme Court's *Mid-La* decision even without considering El Paso's other costs of production. As a consequence, development of the GLA acreage has not proceeded at the optimum level.

The Settlement Agreement eliminates this burden on development and promotes the interests of El Paso and its customers by transferring ownership and operational control of the GLA properties to Tenneco Oil and Conoco and extinguishing the overriding royalty. Tenneco Oil and Conoco will then be able to develop and produce the properties in a manner best suited to providing gas for sale to El Paso at prices advantageous to El Paso's customers.

For their part, Tenneco and Conoco have agreed to the new arrangements on the condition that they receive no less than the normal incidents of a working interest. Thus, for example, they have insisted on the right to process the reassigned reserves for the extraction of natural gas liquids. Moreover, they have insisted upon at least partial recognition of their claim to certain rates under the NGPA.

In the Gas Purchase Agreements negotiated as a part of the total settlement, El Paso has agreed to pay the maximum lawful price established under Sections 102, 103, 107, or 108 for all gas qualifying under those sections, subject to El Paso's "market out" rights. For all other gas, the settlement provides a price of $2.00 per

MMBtu (as adjusted for inflation from the date of the settlement) through the period ending June 30, 1986, and the maximum lawful price established under NGPA Section 106(a) thereafter (currently 88.5¢ per MMBtu for pre-1973 wells). In view of the substantial benefits otherwise obtainable under the settlement and the fact that the GLA production in the aggregate continues to be priced substantially below the price of most of El Paso's alternate supplies, the settlement prices constitute a fair and reasonable resolution of the outstanding pricing issues.[36]

As to this production, there can be no doubt that in the absence of the agreed-to resolution, the appropriate pricing of this gas could be subject to litigation for years. Correct application of the NGPA to GLA production is not clear, nor is the impact of the *Mid-La* decision certain. Legal arguments have been raised which, if accepted, would result in even higher prices for the indefinite future than proposed here. By comparison, not only is the $2.00 Settlement rate for only a two-year period, but thereafter, the Settlement provides that the rate is reduced to the maximum lawful price established under Section 106(a) of the NGPA.

The customers secure significant benefit from this compromise of the pricing issue. Rather than having the pricing issue open for years with the attendant uncertainty and resulting disincentives to the fullest exploitation of these reserves, and with the concomitant possi-

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[36] There is no issue concerning the Commission's statutory authority to approve the $2.00 price. Either the wells in question are subject to Section 109, in which case the price is lawful by definition, or the wells are subject to Section 104. In the latter event, if a higher rate does not otherwise apply, the Commission is authorized to increase the statutory ceiling if the new ceiling is "just and reasonable" within the meaning of the Natural Gas Act. Section 104(b)(2). In view of the benefits of the Settlement, such a finding is clearly permissible.

bility of far higher payments for the indefinite future, they are assured of the certainty of specified prices significantly below other potential prices; these prices decline still further after a two-year period. At the same time, with the uncertainty as to pricing removed, Tenneco and Conoco would be able to engage in the timely development of the reconveyed properties, securing for the customers the benefits of a long-term supply not currently subject to deregulation. When the protection of the market-out is added, it can be seen that the customers of El Paso achieve significant benefits from the pricing under the terms of the Settlement.

Further, the proposed sales and processing arrangements will lead to lower rates for El Paso's customers than would prevail in the absence of the Settlement. So long as El Paso continues to operate under the GLA's, it remains subject to a royalty obligation that imposes a substantial loss on El Paso with respect to virtually each Mcf of gas produced from these GLA's. The inevitable consequence is that El Paso simply cannot justify further development of the GLA reserves (or, indeed, of non-GLA reserves underlying the same acreage) beyond the minimum level necessary to maintain its leases and fulfill its other obligations. By comparison, application of the pricing proposed under the terms of the Settlement renders these untapped reserves available at a price to the consumer lower than that commanded by El Paso's alternate gas sources and which, under current law, is not scheduled to be deregulated as to price. The effect of this curtailed supply, not subject to price deregulation, obviously becomes more pronounced over time as older and cheaper supplies are depleted and as the scheduled January 1, 1985 deregulation of most new sources of gas becomes imminent.

Moreover, under conditions prevailing today, the deliverability of supplies attached to El Paso's system is markedly in excess of demand. This has required El Paso

to curtail production below to take-or-pay levels in most supply areas. One result of such cut backs has been that natural gas liquid production in the San Juan Basin has suffered proportionately. Since the revenues from such liquids are credited to El Paso's cost of service (currently under a "tracking" procedure approved in Docket No. RP82-33-000), El Paso's rates are adversely affected for this reason as well. Once market conditions improve, higher San Juan production will result in correspondingly higher net liquid revenue credits as higher throughput in a more efficient plant is achieved.

Under the Settlement, arrangements are thus put in place which should directly help to stabilize, and ultimately lower, El Paso's rates to its customers. Most critically, the Settlement removes the burden of the special overriding royalties now payable to Tenneco Oil and Conoco and, with them, the existing impediment to further drilling.

In addition, the Settlement contemplates the construction of a substantially more efficient natural gas liquid extraction facility.[37] By permitting optimal liquid recovery, and price certainty, the new arrangements will provide a powerful stimulus to further development of the San Juan Basin. Insofar as El Paso and its ratepayers are concerned, such newly developed production will directly displace more expensive supplies that would otherwise be purchased, and El Paso's revenues from the incremental liquid production will be available to reduce El Paso's cost of service.

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[37] The existing Blanco Plant was originally constructed in 1953 and expanded in 1956. Using the technology of its day, the facility was able to recover all butanes and heavier hydrocarbons but only approximately 25 percent of the propane and virtually none of the ethane in the processed gas. In contrast, the New Blanco Plant will use a modern cryogenic process to recover approximately 80 percent of the ethane and essentially all heavier hydrocarbons.

Projections concerning the economic impact of these changes beyond the near term future are difficult because of their sensitivity to assumptions regarding future prices. On a conservative basis, however, El Paso estimates that while the initial impact of the Settlement will be an increase over the rates currently being charged, this increase is offset within a relatively short time, and El Paso's cost of service will then be lower (on an annual basis) than it would be in the absence of the Settlement. If more favorable but still reasonable assumptions are made regarding future natural gas liquid prices, the initial rate increases are reduced and the overall cost savings are increased.

However, current rate levels are only one of the numerous benchmarks against which the benefits of the settlement must be measured. Difficult issues with respect to the application of the NGPA and the *Mid-La* decision to GLA pricing are open and unresolved. They may remain unresolved for an extended time, and when resolved, higher rates then these resulting from the Settlement may result. By removing the source of this difficulty--pricing of GLA production, the Commission will help ensure that no such rate increase will be needed to respond to NGPA and *Mid-La* issues relating to the GLA production.

B. *Enhanced Gas Supply*

As discussed above, under the current level of special overriding royalty, El Paso simply cannot justify development of the GLA acreage beyond the levels required to meet El Paso's obligations. Since every dollar spent on such development is accompanied by a fully predictable loss on the investment, El Paso does not have the motivation to maximize development of the GLA properties.

Contrasted with this circumstance is the fact that El Paso projects the present deliverability surplus on El Paso's system to be absorbed by the market within a few

years. Further development of the GLA acreage (through early completion of the in-fill drilling program and otherwise) is therefore not only wise but absolutely necessary to avoid potentially damaging supply shortfalls. Certainly, it makes no sense to tolerate unnecessary road blocks to such development. Since prompt approval of the settlement will permit timely development of a substantial portion of such reserves, it clearly serves the public interest in this respect as well.

Further, under the Settlement and related gas purchase agreements, El Paso has the opportunity to realize significant reserve additions wholly separate from the GLA acreage. Tenneco Oil and Conoco have the option to add all of their currently undedicated acreage to their respective Gas Purchase Agreements. This gives El Paso clearly the best opportunity to secure these reserves in preference to other purchasers. Inasmuch as these reserves would likely be added at lower cost than reserves in other producing areas, the consumer again benefits. In light of these circumstances, the reservation of the 25 percent interest in the higher cost gas was a reasonable agreement in order to get access to these additional reserves.

The Settlement provides for a refund by Tenneco Oil and Conoco of $25,000,000 each, for a total of $50,000,000, in discharge of all claims arising under the GLA's. This is an appropriate resolution of the refund issue. The refund is not contingent upon whether the Supreme Court denies certiorari in the current pending cases; rather, the only condition to payment of the refund is the acceptance of this Settlement through final order no longer subject to judicial review.

Whether the customers would otherwise realize any refunds in the absence of this Settlement is problematical. Under the Fifth Circuit's decision, Tenneco Oil and Conoco owe no refunds, a result which also obtains if the

Supreme Court either denies certiorari or affirms the Fifth Circuit's decision. Even a reversal of that court's decision could result in further proceedings before the Fifth Circuit; if remedy proceedings were ultimately held before the Commission and reviewed by the courts, it could nevertheless be years before any refunds became payable. Further, arguments have been raised by Tenneco Oil and Conoco whereby they claim their refund liability has not yet begun to accrue even if the GLA's are found jurisdictional. In contrast the benefit of a present refund, currently payable, as opposed to the future contingency of an uncertain refund obligation, serves the public interest, particularly when unconditionally tied to approval of this Settlement.

The Settlement herein proposed is the product of difficult negotiations over a period of several months. By securing a substantial refund commitment notwithstanding the GLA's owners success in the courts, by placing future relations with the two principal GLA owners in a posture that achieves a stable long term supply on reasonable terms, and by doing so under arrangements which will reduce El Paso's rates below the level that would otherwise prevail, the Settlement achieves a fair balance in view of all the surrounding circumstances. This proposed resolution is accordingly fair, responsible and in the public interest and should be approved.

IV.

SPECIFIC AUTHORIZATIONS REQUESTED

El Paso, Tenneco Oil and Conoco respectfully request that the Commission's order approving the Settlement find it and all Operative Agreements described in Article V thereof, to be reasonable, prudent and in the public interest. El Paso, Tenneco and Conoco further request that such order specifically grant the following approvals and authorizations:

A. *Transfer of Leaseholds and Appurtenant Property*

Pursuant to Article V of the Settlement, El Paso will reconvey on the Effective Date of the Settlement to Tenneco and Conoco those interests in the leases and certain assets situated thereon associated with their reserved overriding royalty interests under GLA's 47, 52, 60 and 78. Until the Effective Date, gas produced from those properties will continue to flow to El Paso in interstate commerce. After the Effective Date, Tenneco and Conoco will commence "first sales" of the natural gas in interstate commerce to El Paso in accordance with the terms and provisions of the Tenneco Oil and Conoco Gas Purchase Agreements. Thus, under the structuring of the Settlement, there will be no cessation of the flow of gas to El Paso for resale in interstate commerce. The gas being sold to El Paso in the resulting sale by Tenneco and Conoco will be subject to the Commission's jurisdiction under Section 7(c) of the Natural Gas Act, except to the extent exempted from the requirements of that Act under Section 601 of the NGPA. Accordingly, El Paso applies for any necessary authorizations required under this Natural Gas Act to effect the transfer of the interests in the leases and related assets to effect the transactions contemplated by the Settlement, including, if required, any abandonment authorizations under Section 7(b) of the Natural Gas Act.

B. *Gas Purchase Agreements and Amendments to Existing Gas Sales Contracts*

Article VIII of the Tenneco Oil Gas Purchase Agreement and Article X of the Conoco Gas Purchase Agreement provide for the payment by El Paso of a base price of $2.00 per MMBtu from May, 1984 through June, 1986, escalating pursuant to Section 101 of the NGPA, for gas not otherwise qualifying for a higher maximum lawful price. Thereafter (1) all gas produced from wells drilled prior to January 1, 1973 will be priced pursuant to the provisions of Section 106(a) of the NGPA; (2) all

gas produced from wells drilled on and after January 1, 1973 and prior to January 1, 1975 will be priced pursuant to the provisions of Section 104 of the NGPA; and (3) all gas produced from wells drilled on or after January 1, 1975 will be priced in accordance with the applicable provisions of the NGPA as though such gas [had] been produced and sold by an independent producer as of November 8, 1978.

Tenneco Oil and Conoco have reserved the right in their respective Gas Purchase Agreements to process gas initially in El Paso's processing facilities located in the San Juan Basin (Commonly referred to as the San Juan, Chaco and Blanco Plants or the Complex) in accordance with the provisions of the El Paso Complex Processing Agreements. Additionally, Tenneco Oil and Conoco are obligated to process such gas in the new processing plant (the New Blanco Plant) following construction of such by Tenneco Oil and Conoco pursuant to the provisions of the Plant Siting Agreement and the Gas Plant Straddle and Processing Agreement. Finally, Tenneco Oil and Conoco may process such gas in some other plant to be located at a mutually agreed upon point in the El Paso San Juan system if for some reason the New Blanco Plant is not constructed. El Paso and Conoco and El Paso and Tenneco Oil have amended those existing gas purchase contracts referenced in Appendix A of the Tenneco Oil Amendatory Agreement (Exhibit D) and Appendix A of the Conoco Amendment of Gas Purchase Contracts (Exhibit E) to provide Tenneco Oil and Conoco the right to process all gas sold under such gas Purchase contracts on the same terms and conditions as provided for in the Gas Purchase Agreements, the El Paso Complex Gas Processing Agreement and the Gas Plant Straddle and Processing Agreement.

El Paso proposes to credit to its jurisdictional cost of service the net liquid revenues received (1) from the processing by it in the Complex of gas tendered for proc-

essing therein; (2) from the processing in the New Blanco Plant of all El Paso gas tendered for processing therein, and (3) revenues from fees charged under the Transportation and Fractionation Agreement.

Tenneco Oil and Conoco request that the Commission (a) issue certificates of public convenience and necessity authorizing the sale of gas by Tenneco and Conoco to El Paso pursuant to the terms of the Gas Purchase Agreements for that gas which remains subject to the certificate authority of the Commission under Section 7(c) of the Natural Gas Act and Section 601 of the NGPA; (b) find all rates and charges specified in the Tenneco and Conoco Gas Purchase Agreements to be "just and reasonable" under the standards of the Natural Gas Act and the NGPA; (c) approve, to the extent necessary, the reservation of processing rights in the Tenneco Oil and Conoco Gas Purchase Agreements pursuant to provisions of the Natural Gas Act, particularly Section 7(b) thereof, and any applicable provisions of the NGPA; (d) amend all certificates of public convenience and necessity, and related rate schedules, previously issued for the gas sales contracts referenced in Appendix A to the Tenneco Oil Amendatory Agreement and Exhibit A to the Conoco Amendment to Gas Purchase Contracts in accordance with the provisions of Sections 7(b) and (c) of the Natural Gas Act; and (e) approve, to the extent necessary, the amendments reserving processing rights in all other gas sales contracts referenced in Appendix A to both the Tenneco Oil Amendatory Agreement and Exhibit A to the Conoco Amendment to Gas Sales Contracts pursuant to the provisions of the Natural Gas Act and the NGPA.

El Paso requests that the Commission (a) find that the payment of all prices by El Paso under the Gas Purchase Agreements to be both prudent and just and reasonable under the standards of the Natural Gas Act and the NGPA and that El Paso will be permitted to recover in its rates and charges all prices paid to Tenneco Oil and

Conoco under the Gas Purchase Agreements pursuant to Section 601(c)(2) of the NGPA; and (b) find El Paso's proposed credit to its jurisdictional cost of service of all net liquid reserves from the processing of gas pursuant to the El Paso Complex Processing Agreement and pursuant to the provisions of the Gas Plant Straddle and Processing Agreement to be reasonable and appropriate.

C. *Transportation*

Tenneco Oil and Conoco each have reserved the right to withdraw from sale to El Paso up to 25 percent of their respective pro-rata share of proved recoverable gas reserves not subject to the requirements of Section 7(b) of the Natural Gas Act. Additionally, Tenneco Oil and Conoco each have reserved the right to terminate their respective Gas Purchase Agreements with respect to any gas which El Paso has exercised its contract right to "market out" by lowering the "first sales" price to that determined by El Paso to be the value of the gas to El Paso. This right of Tenneco Oil and Conoco to terminate is expressly limited to gas not subject to the requirements of Section 7(b) of the Natural Gas Act. El Paso has released and waived any rights granted by Section 315(b) of the NGPA as to such gas.

Pursuant to the Gas Gathering and Transportation Agreements (Exhibits F-1, F-2, G-1, G-2, H and I to the Settlement Agreement), El Paso is obligated to provide transportation services, on behalf of Tenneco Oil and Conoco, for that gas reserved by Tenneco Oil and Conoco and that gas subject to release from the provisions of each Gas Purchase Agreement by virtue of El Paso's exercise of its "market out" right. El Paso's obligation to transport such gas on behalf of Tenneco Oil and Conoco is subject to capacity being available in El Paso's gathering and transportation facilities and receipt of all necessary regulatory approvals.

The charges for transportation and gathering by El Paso shall be those rates in effect and reflected in El

Paso's FERC Gas Tariff, Third Revised Volume No. 2 or any superseding tariff.

El Paso requests that the Commission authorize and certificate the above-referenced transportation services pursuant to the provisions of Section 7(c) of the Natural Gas Act. In addition, El Paso requests that to facilitate regulatory administration, the Commission provide that a list of the receipt points added to and deleted from the Gas Gathering Agreements be filed by El Paso within ninety (90) days of the end of each calendar year.

D. *The New Blanco Plant*

In connection with the construction and operation of the New Blanco Plant, El Paso is required, pursuant to Article II of the Gas Plant Straddle and Processing Agreement, to construct and operate those tap and appurtenant facilities necessary to deliver to and accept gas from such Plant and to make any modifications required to meet its obligations thereunder. Additionally, Tenneco Oil and Conoco are required, pursuant to Article II of the Gas Plant Processing and Straddle Agreement, to install and operate at least 10,000 horsepower of secondary compression necessary for operation of the Plant, and El Paso is required, pursuant to Articles II and V of the Gas Plant Processing and Straddle Agreement, to idle or shut down reciprocating compressors located in El Paso's existing Blanco Plant. Finally, upon commencement of operations at the New Blanco Plant, El Paso is obligated to suspend certain operations at its existing Blanco Plant.

El Paso requests that the Commission (a) issue certificates of public convenience and necessity authorizing construction and operation of all tap and appurtenant facilities necessary to permit delivery of gas to and receipt of gas from the New Blanco Plant or, alternatively, find that such facilities can be constructed under its "blanket-type" certificate to the extent the require-

ments of 18 CFR § 157.208 are satisfied; (b) modify the existing certificates of El Paso to permit El Paso to modify facilities required to make connections and deliveries to and from the New Blanco Plant in accordance with the obligations of El Paso under the Gas Plant Straddle and Processing Agreement; and (c) approve, to the extent required under Section 7(b) of the Natural Gas Act, the idling or shut down of the reciprocating compressors at the existing Blanco Plant. The suspension of operations at the existing Blanco Plant described above does not raise any Section 7(b) issues inasmuch as such plant has not been certificated and is not jurisdictional under the Natural Gas Act. Should the Commission conclude otherwise, then El Paso requests approval to the extent required under Section 7(b) of the Natural Gas Act to effect suspension of such operations at the existing Blanco Plant.

E. *Accounting Entries*

As reflected in the attached schedule, upon commencement of operations of the New Blanco Plant, El Paso proposes to adjust its records to reflect the cessation of certain operations at the existing Blanco plant by El Paso as previously described. Additionally, upon reconveyance of the leases to Tenneco Oil and Conoco, El Paso proposes to adjust amounts from its book and accounts to reflect the transfer to Tenneco Oil and Conoco of El Paso's interest in the assigned properties and all related equipment required for the production and delivery to El Paso of the gas subject to reconveyance. Accordingly, El Paso respectfully requests that the Commission approve these accounting entries, subject to audit in El Paso's next general rate increase filing pursuant to Section 4 of the Natural Gas Act.

F. *Refunds*

Pursuant to Article VI of the Stipulation, Tenneco Oil and Conoco each shall refund to El Paso, within 30

days of issuance of final and nonappealable orders approving this Offer of Settlement, a sum of $25,000,000, for a total of $50,000,000, in settlement of all past, present and future claims against Tenneco Oil and Conoco arising out of or in any way connected with the issues raised in these docketed proceedings. El Paso, Tenneco Oil and Conoco respectfully request that the Commission find that payment of such refunds to El Paso, and the flow-through of such refunds by El Paso to its jurisdictional customers under the terms of its prior rate settlement agreements, represents a full and complete settlement in liquidation of any and all amounts of refunds by El Paso, Tenneco Oil and Conoco, or any of them, in these, or any future, proceedings arising out of the issues resolved by this Settlement and the Operative Agreements.

G. *Other*

Applicants respectfully request any other approvals or findings as may be necessary under the Natural Gas Act and NGPA to effectuate this Offer of Settlement (including the Settlement and Operative Agreements) and a waiver of any applicable Commission regulations under both the Natural Gas Act and NGPA as may be necessary for issuance of such approvals and findings.

Applicants request that the Commission direct the Solicitor to request the Solicitor General of the United States to file a suggestion of mootness as to Tenneco Oil and Conoco in those cases currently pending before the United States Supreme Court in Nos. 83-1321, -1432, -1433, -1442, -1443 and -1618 at such time as the Commission's order approving the Settlement becomes final and no longer subject to judicial review.

V.

ADDITIONAL REPRESENTATIONS

El Paso, Tenneco Oil and Conoco represent and stipulate that this Offer of Settlement, together with the doc-

uments attached hereto, constitutes the complete agreement among them and that there are no agreements, undertakings or conditions, express or implied, related to the settlement of this proceeding other than those described hereinabove or set forth in the attached Settlement and the related agreements and documents annexed thereto and expressly incorporated therein.

VI.

RESERVATIONS

This Offer of Settlement, which for all purposes shall include the attached Settlement and the Operative Agreements attached thereto, is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. Unless the attached Settlement shall have become effective in accordance with its terms, this Offer of Settlement shall be privileged and neither its contents nor the contents of any written or oral statements made or prepared in connection with its preparation or negotiation may be used in this or any other pending or future proceeding before this or any other Commission, agency or court.

This Offer of Settlement represents a negotiated settlement with respect to the various matters agreed to herein and is intended to relate only to the specific matters referred to herein. Should this Offer of Settlement be approved, neither El Paso, Tenneco Oil, Conoco, nor any other party or the Commission and its Staff shall be deemed to have approved, accepted, agreed to or consented to any concept, method, theory, principle or statutory interpretation underlying or supposed to underlie any of the matters agreed to herein.

Should this Offer of Settlement not be approved, then all rights, claims and obligations, both procedural and substantive, of El Paso, Tenneco Oil, Conoco, any other party and the Commission and its Staff, as they existed

immediately prior to the submission of this Offer of Settlement, shall be preserved. By consenting to this Offer of Settlement, no party waives any right, claim or objection which it may otherwise have in connection with any matter not expressly provided for herein.

In the event of any inconsistency between this Offer of Settlement (excluding its attachments), on the one hand, and the attached Settlement (including the agreements and documents incorporated therein), on the other, the provisions of the Settlement and the Operative Agreements shall govern.

VII.

DISMISSAL OF TENNECO AND CONOCO AS RESPONDENTS AND TERMINATION OF PROCEEDINGS

Upon the effectiveness of the attached Settlement, Tenneco Oil and Conoco shall be deemed to be dismissed as respondents in *El Paso Natural Gas Company*, et al., Docket No. CP74-314, *et al.*, and *El Paso Natural Gas Company*, Docket No. CI83-356, and the proceedings at *Tenneco Oil Co.*, Docket No. CI84-49, and *CONOCO, Inc.*, Docket No. CI84-50, shall be deemed terminated.

CONCLUSION

El Paso, Tenneco Oil and Conoco respectfully request that the Commission accept this Offer of Settlement as full, fair and final resolution in the public interest of the captioned proceedings as to Tenneco Oil and Conoco and that it promptly issue the attached order approving the Stipulation of Settlement and Agreement without condition or modification.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

By /s/ Charles R. Jack
CHARLES R. JACK

TENNECO OIL COMPANY and
CONOCO INC.

By /s/ Charles M. Darling, IV
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DATED: May 9th, 1984

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the attached "Offer of Settlement and Joint Request for Approval of Stipulation of Settlement and Agreement" to be served upon each person on the official restricted service list compiled by the Secretary in this proceeding in accordance with the requirements of Section 2010 of the Commission's Rules of Practice and Procedure.

Dated at El Paso, Texas, this 18th day of May, 1984.

/s/ Arthur R. Formanek
ARTHUR R. FORMANEK